

**FLATHEAD COUNTY PLANNING AND ZONING OFFICE**  
**ZONING VARIANCE REPORT (#FZV-11-01)**  
**ROBERT & SOPHIA WELLS**  
**JUNE 21, 2011**

A report to the Flathead County Board of Adjustment regarding a request by Robert & Sophia Wells for a variance to Section 7.12.030 of the Flathead County Zoning Regulations regarding the definition of lot area as it pertains to the subject property located at 27 Hidden Lane in the Willow Glen zoning district.

The Flathead County Board of Adjustment will hold a public hearing on the variance request on July 5<sup>th</sup>, 2011 beginning at 6:00 P.M. in the 2<sup>nd</sup> floor conference room of the Earl Bennett Building, 1035 First Avenue West, Kalispell. Documents pertaining to this application are available for public inspection at the Flathead County Planning and Zoning Office, also located on the second floor of the Earl Bennett Building.

**I. APPLICATION REVIEW UPDATES**

**A. Land Use Advisory Committee/Council**

The proposed variance is specific to a property not located within the advisory jurisdiction of a local land use advisory committee.

**B. Board of Adjustment**

The Flathead County Board of Adjustment will hold a public hearing to review the variance request on Tuesday, July 5<sup>th</sup>, 2011 beginning at 6:00 P.M. in the 2<sup>nd</sup> floor conference room of the Earl Bennett Building. This space is reserved for a summary of the Flathead County Board of Adjustment's discussion and decision at that hearing.

**II. GENERAL INFORMATION**

**A. Application Personnel**

**i. Applicant(s)/Landowners**

Robert & Sophia Wells  
99 Sage Lane  
Kalispell, MT 59901  
[Robert799@bresnan.net](mailto:Robert799@bresnan.net)

**ii. Technical Assistance**

Sands Surveying, Inc.  
2 Village Loop  
Kalispell, MT 59901  
[eric@sandssurveying.com](mailto:eric@sandssurveying.com)

**B. Property Location**

The subject property is located at the corner of Sage Lane and Hidden Lane, approximately 1/3 of a mile south of Conrad Drive (see Figure 1 below). The 2.16 acre property can be legally described as Tract 8D in Lot 7-8 located in

Section 9, Township 28 North, Range 21 West, P.M.M., Flathead County, Montana.

**Figure 1:** Aerial view of subject property (outlined in red).



**Figure 2:** Detailed aerial of subject property.





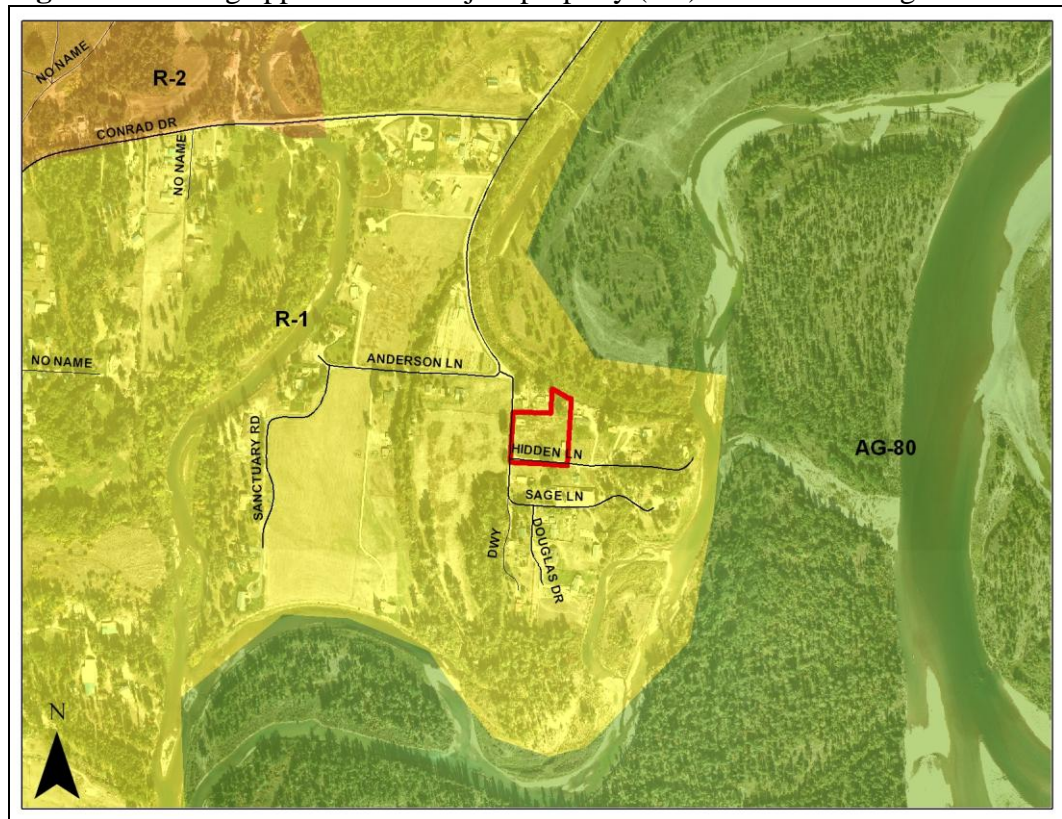
**C. Existing Land Use(s) and Zoning**

The subject property is located within the Willow Glen zoning district and is zoned “R-1 Suburban Residential”, a district intended to provide “*estate type development. These areas would normally be located in rural areas away from concentrated urban development, typically not served by water or sewer services, or in areas where it is desirable to permit only low-density development (e.g., extreme topography, areas adjacent to floodplains, airport runway alignment extensions)*”. The property is currently undeveloped.

**D. Adjacent Land Use(s) and Zoning**

As shown by Figure 3 below, the area surrounding the subject property is similarly zoned “R-1 Suburban Residential”, with some “R-2 One Family Limited Residential” zoning located further north and west of the subject property along Conrad Drive, and “AG-80 Agricultural” zoning located predominantly to the east and south of the property in areas along the Flathead River. Adjacent properties appear to be utilized for residential and/or agricultural purposes, with single family dwellings, agricultural accessory buildings, pastures and gardens prevalent in the general area.

**Figure 3:** Zoning applicable to subject property (red) and surrounding area.



**E. Summary of Request**

The applicants have requested a variance to Section 7.12.030 of the Flathead County Zoning Regulations regarding the definition of “Lot Area”. Lot area is defined as *“The total horizontal area within the boundary lines of a lot. Where surface utilities or street easements are located within a parcel, lot area computations shall not include that area contained within the easement except for lots located in SAG-5, SAG-10, AG-20, AG-40, and AG-80 Zoning Districts.”* The subject property is zoned “R-1 Suburban Residential”, a zoning classification not listed as one that allows acreage within a road or utility easement to be included in the total lot area calculations. The subject property is a corner lot having frontage along two roads – Sage Lane and Hidden Lane. Approximately 22,275 sq. ft. of the subject property’s lot area is shown to be under easement, and based upon the applicable regulations cannot be considered part of the total lot area for this tract of land. The applicants have attempted to create one additional parcel through family transfer, but based upon the definition of “lot size” are unable to comply with the applicable zoning regulations. They have requested a variance to this section of the regulations to allow the parcels proposed created through family transfer to comply with the lot size requirements of the R-1 classification.

**F. Compliance with Public Notice Requirements**

Notification was mailed to adjacent property owners within 150 feet of the subject property on June 14<sup>th</sup>, 2011, pursuant to Section 2.05.030(2) of the Zoning Regulations. Legal notice of the public hearing on this application will be published in the June 19<sup>th</sup>, 2011 edition of the Daily Interlake.

**G. Agency Referrals**

No agency referrals were sent regarding the variance request, as the determination of acreage included in lot size calculations would not appear to negatively impact a public agency.

**III. COMMENTS RECEIVED**

**A. Public Comments**

No written public comments have been received to date regarding the variance request. It is anticipated any individual wishing to provide public comment on the application will do so during the public hearing scheduled for July 5<sup>th</sup>, 2011.

**B. Agency Comments**

No agency referrals were sent regarding the variance request; no comments have been received to date.

**IV. CRITERIA REQUIRED FOR CONSIDERATION**

Per Section 2.05.030 of the Flathead County Zoning Regulations, what follows are review criteria for consideration of a variance request, as well as suggested findings of fact based on review of each criterion. It should be noted Section 2.05.030 of the Flathead County Zoning Regulations states “No variance shall be granted unless the

Board (of Adjustment) finds that all of the following conditions are met or found to be not pertinent to the particular case”:

**A. Strict compliance with the provisions of these regulations will:**

**i. Limit the reasonable use of property;**

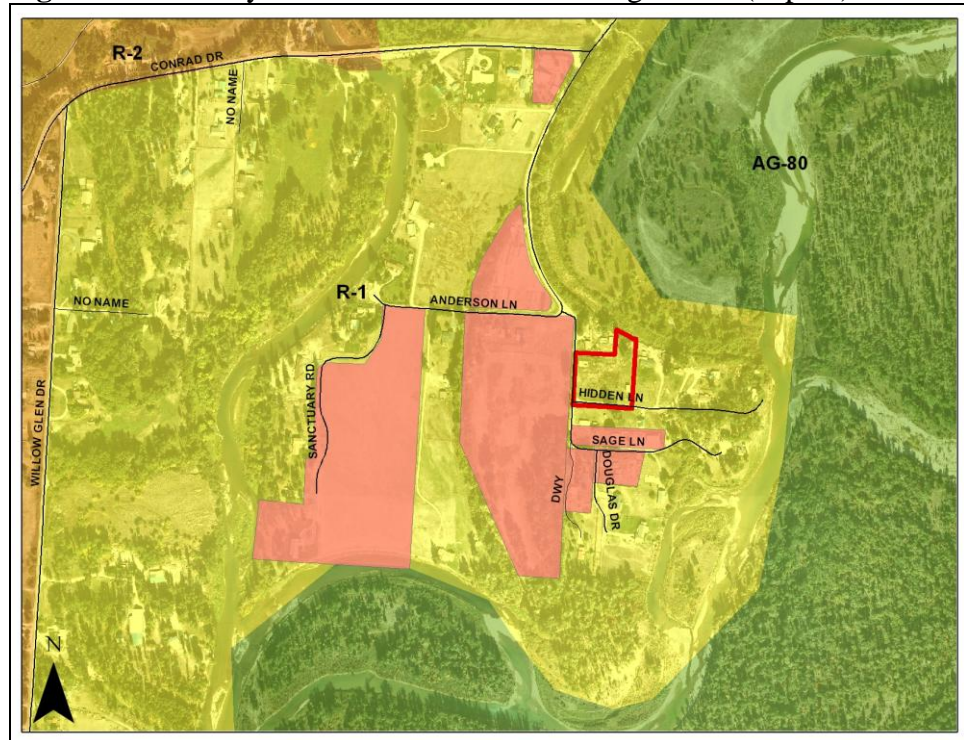
The subject property is currently undeveloped, but located in an area of the County that is zoned for residential use (R-1 Suburban Residential). The current size and configuration of the property could easily accommodate a single family dwelling and accessory structures, or any of the listed permitted or conditionally permitted uses onsite. A landowner has the right to subdivide a parcel as they see fit in accordance with the applicable regulations; in this particular case, restrictions on lot size prohibit the landowner’s ability to subdivide the property but do not prohibit the landowner’s right to use the property as allowed by the R-1 zoning. The application states neighboring property owners in the area have multiple residences per tract of record, and this may be the case. While R-1 zoning does not permit multiple single family residences on one tract of land, it is quite possible these properties are grandfathered under the Willow Glen zoning district, and the multiple residences existed prior to the date the zoning district went into effect (July 20, 1987).

**Finding #1** - Strict compliance with the regulations would not limit the reasonable use of the property because although the restriction on lot size would prohibit future subdivision it would not restrict the landowner’s current use or enjoyment of the property as allowed by the applicable zoning.

**ii. Deprive the applicant of rights enjoyed by other properties similarly situated in the same district.**

The neighborhood in which the subject property is located is predominantly residential, a reflection of the “R-1 Suburban Agricultural” zoning in place. Properties in this area range in size and configuration, from slightly less than one acre to well over ten acres in size. As previously stated, the applicant has the right to use the subject property in accordance with the applicable zoning regulations, just as adjacent landowners have the right to use their properties in the same manner. What the applicant is unable to do is split the property into two separate lots, a right that other property owners may enjoy based upon the net acreage of their respective lots. The configuration of the subject property is somewhat unique in that it fronts two roadways and therefore the amount of acreage under easement may be more than applies to other lots similarly zoned. However, there are tracts similarly situated in the same zoning district that appear to have either complied with the lot area requirements of the zoning or would not be able to further subdivide based upon Section 7.12.030 of the zoning regulations (see Figure 4 below).

**Figure 4:** Similarly situated lots within the zoning district (in pink).



**Finding #2** - Strict compliance with the regulations would not deprive the applicant of rights enjoyed by other properties similarly situated in the same district because the subject property is permitted the same types of uses another undeveloped parcel would be allowed under R-1 zoning; and because other similarly situated corner lots within the district appear to have either met the lot area requirements or would be similarly restricted from subdividing further based upon this provision of the zoning regulations and similar to the subject property.

**B. The hardship is the result of lot size, shape, topography, or other circumstances over which the applicant has no control.**

The hardship claimed by the applicant relates to how the lot is situated on the corner of Sage Lane and Hidden Lane. Because the property fronts two roadways, a rather significant portion of the lot has been placed under easement and cannot count toward the total acreage when calculating lot size. While the applicants have no control over the lot's location and the amount of road frontage involved, they do have control over how the lot is used in the future – and whether to subdivide or not. The subject parcel currently complies with the minimum lot size requirements of R-1 zoning, and has adequate useable space to accommodate any of the permitted or conditionally permitted uses allowed under the applicable zoning.

**Finding #3** – The claimed hardship is not the result of lot size, shape or location, but instead is the result of the applicant's desire to subdivide the property and

create two lots. This hardship is therefore created by the applicant because the lot in its current state is not limited in use under R-1 zoning and the applicant has full control over whether or not to subdivide.

**C. The hardship is peculiar to the property.**

The hardship is somewhat peculiar to the property because of the extent of acreage under easement. As stated in the application, a twenty (20) foot road easement is deducted from the south side of the property for Hidden Lane while a sixty (60) foot road easement is deducted from the west side of the property for Sage Lane. Although the amount of acreage under easement may be unique to this tract, the prevalence of corner lots in the zoning district having two road frontages is not. This is evident by Figure 4 above.

**Finding #4** – The extent of the hardship is peculiar to the subject property because of the amount of acreage under easement on this tract; however, this type of hardship is not peculiar to the general area because a number of corner lots are similarly impacted by multiple road frontages/easements.

**D. The hardship was not created by the applicant.**

As discussed under Criteria IV.B above, the perceived hardship is influenced by two differing perspectives. The current configuration of the lot does not appear to have been created by the applicant. However, it is the applicant's desire to split the subject property into two parcels, and this desire to subdivide has resulted in the perceived hardship. Were the applicants to utilize the property in its current configuration, as permitted under the applicable R-1 zoning, there would be no hardship relating to use on the subject property, other than the limitation placed on multiple dwellings or uses on a single tract of land that do not have grandfathered status.

**Finding #5** – The hardship is not wholly created by the applicant because the current size and configuration of the subject property does not appear to be the result of the property owner's actions, but their desire to further subdivide has created a perceived hardship resulting in this application for a variance.

**E. The hardship is not economic (when a reasonable or viable alternative exists).**

The hardship does not appear to be economic based on rationale provided in the application for a variance. The applicants have stated they have two adult children to whom they wish to gift property through a family transfer. They are not requesting the variance in order to subdivide the property and sell the land for a profit. The only alternative available to the applicants is to not divide the property in two, but utilize the parcel as it is currently configured and in accordance with the applicable zoning.

**Finding #6** – The hardship would not be economic because the applicants have stated they would like to split the parcel through family transfer and gift each lot to one of their grown children rather than selling each lot for economic gain.



**F. Granting the variance will not adversely affect the neighboring properties or the public.**

The proposed variance would have a minimal impact on adjacent properties and the general public. If the variance were granted, one additional lot could be created from the subject property, resulting in additional density that would not be permitted otherwise. The uses allowed on this additional parcel would be guided by the same set of regulations that apply to the surrounding properties; setback and height restrictions as well as lot coverage requirements would continue to apply to both properties. As stated in the application materials, a handful of properties in the neighborhood currently have multiple homes on one tract of record, presumably as grandfathered uses that pre-date the zoning district's creation, but possibly as unreported zoning violations. From a density standpoint, one additional residence on its own separate tract appears consistent with the surrounding land use and current density. However, cumulative impacts resulting from increased development densities do have the potential to impact existing infrastructure, particularly the private roadways serving the subject parcel and surrounding properties.

**Finding #7** – Granting of the variance would not significantly impact neighboring properties or the public because the resulting residential density would generally be consistent with development in the surrounding neighborhood, and because future development on the subject property(s) would be required to adhere to the use, bulk and dimensional standards of the R-1 zoning in place.

**G. The variance requested is the minimum variance which will alleviate the hardship.**

The applicant is requesting a variance to Section 7.12.030 of the zoning regulations, to allow acreage under road or utility easement to count toward lot area calculations in R-1 zoning. Utilizing gross acreage instead of net acreage in lot area calculations would be the minimum variance necessary to alleviate the perceived hardship.

**Finding #8** - The variance requested appears to be the minimum variance necessary to address the issue because it would allow gross acreage be considered in lot area calculations.

**H. Granting the variance will not confer a special privilege that is denied other similar properties in the same district.**

All similarly situated corner lots located in the Willow Glen zoning district, zoned "R-1 Suburban Residential" and having one or more road and/or utility easements traversing the property would be required to meet the lot area definition found in Section 7.12.030 FCZR. As previously stated and shown in Figure 4 above, there are multiple parcels in the area surrounding the subject property that appear to have similar lot configurations with respect to road frontage. Some of these lots clearly have enough acreage to allow further subdivision while still meeting the lot area requirements of the zoning regulations; other lots appear to have been created in conformance with the provision of the regulations, meeting the one acre



minimum lot size requirement while excepting acreage within a road and/or utility easement. It is anticipated existing parcels that include less than two acres of land outside of a recorded easement (or multiple easements) would be held to the same standards as the subject property, given the current circumstances. Granting the variance request could confer special privilege by essentially allowing a reduction in lot area when in all other instances, parcels are required to abide by the applicable zoning when subdividing or completing a family transfer.

**Finding #9** – Granting of the variance would confer a special privilege that is denied other similar properties in the district because similarly situated corner lots in the Willow Glen district appear to have been created or are currently utilized in a manner consistent with the regulations, and because granting the variance would allow a division of property out of conformance with the minimum lot size requirements of the district based upon desired, as opposed to reasonable and allowable use.

## **V. SUMMARY OF FINDINGS**

1. Strict compliance with the regulations would not limit the reasonable use of the property because although the restriction on lot size would prohibit future subdivision it would not restrict the landowner's current use or enjoyment of the property as allowed by the applicable zoning.
2. Strict compliance with the regulations would not deprive the applicant of rights enjoyed by other properties similarly situated in the same district because the subject property is permitted the same types of uses another undeveloped parcel would be allowed under R-1 zoning; and because other similarly situated corner lots within the district appear to have either met the lot area requirements or would be similarly restricted from subdividing further based upon this provision of the zoning regulations and similar to the subject property.
3. The claimed hardship is not the result of lot size, shape or location, but instead is the result of the applicant's desire to subdivide the property and create two lots. This hardship is therefore created by the applicant because the lot in its current state is not limited in use under R-1 zoning and the applicant has full control over whether or not to subdivide.
4. The extent of the hardship is peculiar to the subject property because of the amount of acreage under easement on this tract; however, this type of hardship is not peculiar to the general area because a number of corner lots are similarly impacted by multiple road frontages/easements.
5. The hardship is not wholly created by the applicant because the current size and configuration of the subject property does not appear to be the result of the property owner's actions, but their desire to further subdivide has created a perceived hardship resulting in this application for a variance.

6. The hardship would not be economic because the applicants have stated they would like to split the parcel through family transfer and gift each lot to one of their grown children rather than selling each lot for economic gain.
7. Granting of the variance would not significantly impact neighboring properties or the public because the resulting residential density would generally be consistent with development in the surrounding neighborhood, and because future development on the subject property(s) would be required to adhere to the use, bulk and dimensional standards of the R-1 zoning in place.
8. The variance requested appears to be the minimum variance necessary to address the issue because it would allow gross acreage be considered in lot area calculations.
9. Granting of the variance would confer a special privilege that is denied other similar properties in the district because similarly situated corner lots in the Willow Glen district appear to have been created or are currently utilized in a manner consistent with the regulations, and because granting the variance would allow a division of property out of conformance with the minimum lot size requirements of the district based upon desired, as opposed to reasonable and allowable use.

## **VI. CONCLUSION**

Section 2.05.030 (3) of the Flathead County Zoning Regulations states a variance shall not be granted unless all of the review criteria have been met or are found not to be pertinent to a particular application. Based upon the 9 draft findings of fact presented by this staff report, the variance request fails to meet all eight criteria required.